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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10848933	5/19/2004	LEWIS, MICHAEL	LLP127US

EXAMINER

KHANH C.. TRAN

ART UNIT	PAPER
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2611 20091026

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

This communication is responsive to Statutory Double Patenting rejection on co-pending Application 12/543,487.

/K.C.T/

/KHANH C. TRAN/
Primary Examiner, Art Unit 2611

DETAILED ACTION

1. The Amendment After Final Rejection filed on 10/09/200 has been entered.
Claims 2-9 and 12-18 are still pending in this Office action.

Response to Arguments

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
3. Applicant's arguments with respect to claim 12 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claim 12 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of copending Application No. 12/543,487. This is a

provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim 12 of the instant Application matches word-by-word with claim 4 of the co-pending Application '487'.

5. Claims 13-18 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 5-10 of copending Application No. 12/543,487. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Allowable Subject Matter

6. Claims 2-9 are allowed.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KHANH C. TRAN whose telephone number is (571)272-3007. The examiner can normally be reached on Monday - Friday from 08:00 AM - 05:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shuwang Liu can be reached on 571-272-3036. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KCT/

*/KHANH C. TRAN/
Primary Examiner, Art Unit 2611*